SUBRAMANIAM PARAMASIVAM A

v.

MALAYAN FINANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR B
HISHAMUDIN MOHD YUNUS J
[ORIGINATING SUMMONS NO: S4-24-2596-2004]
11 AUGUST 2005

CIVIL PROCEDURE: *Counterclaim - Sessions Court - Jurisdiction - Counterclaim exceeding value limit of Sessions Court's jurisdiction - Whether Sessions Court would have jurisdiction if parties come to agreement to confer it pursuant to s. 65(3) and (4) Subordinate Courts Act 1948 - Whether plaintiff's application to transfer civil suit to High Court premature* C D

CIVIL PROCEDURE: *Transfer - Sessions Court to High Court - Counterclaim exceeding value limit of Sessions Court's jurisdiction - Whether Sessions Court would have jurisdiction if parties come to agreement to confer it pursuant to s. 65(3) and (4) Subordinate Courts Act 1948 - Whether plaintiff's application to transfer civil suit to High Court premature* E

This was an application by the plaintiff to transfer a civil suit from the Sessions Court to the High Court. The plaintiff submitted that the amount of his counterclaim at the Sessions Court, RM492,000, was beyond the jurisdiction of the Sessions Court. The defendant objected to the application by submitting that the Sessions Court would have the jurisdiction to try the action, notwithstanding the amount under the counterclaim, if parties had come to an agreement to confer jurisdiction to the Sessions Court pursuant to s. 65(3) and (4) of the Subordinate Courts Act 1948. The defendant argued that the plaintiff should have inquired from the defendant first whether the defendant was agreeable to have the counterclaim adjudicated before the Sessions Court, before proceeding to file the present originating summons. F G H

Held (dismissing the application):

(1) A party should make an application to transfer a Sessions Court case to the High Court by reason of value limit only after the avenue to have the matter tried before the Sessions Court, as provided for under sub-ss. (3) and (4) of s. 65 had been diligently explored. The initiative to have the jurisdiction I

agreement must be made by the plaintiff as it was his counterclaim that exceeded the value limit of the Sessions Court. He should have in the first place proposed to the defendant. And he should make the application to the High Court for the transfer of the proceeding only if (a) the defendant unreasonably refused to agree to the proposal; (b) the defendant refused to respond to the proposal and (c) the defendant unreasonably delayed in responding to the plaintiff's proposal. There was merit in the defendant's contention that the present originating summons was premature. (paras 8, 9 & 10)

Case(s) referred to:
Country Heights Marketing v. Firstland Management [1998] 3 CLJ 17 HC ***(refd)***

Legislation referred to:
Subordinate Courts Act 1948, s. 65(1), (3), (4)

For the plaintiff - Mohd Rosly Mohd Ayub; M/s Jayaratnam & Partners
For the defendant - Juliana Salleh; M/s Hisham, Chong & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Hishamudin Mohd Yunus J:

[1] This originating summons is an application by the plaintiff to transfer a civil suit from the Sessions Court of Kuala Lumpur to the High Court of Kuala Lumpur.

[2] In the Sessions Court action, the plaintiff in the present originating summons is the defendant, whilst the defendant in the present originating summons is the plaintiff.

[3] In the Sessions Court action, the plaintiff in the present originating summons (who is the defendant in the Sessions Court action) has a counter-claim against the defendant in the present originating summons (who is the plaintiff in the Sessions Court action).

[4] The reason given by the plaintiff (in the present originating summons) in wanting to have the Sessions Court action transferred to the High Court is because the amount of his counterclaim at the Sessions Court is RM492,000, and this is beyond the jurisdiction of the Sessions Court.

[5] Subject to few exceptions as provided for by s. 65(1)(a) of the Subordinates Courts Act 1948, the civil jurisdiction of the Sessions Court in terms of the value of the subject matter is limited to RM250,000 (see s. 65(1) (b) of the Subordinate Courts Act 1948).

[6] The defendant (in the present originating summons) objects to the application. According to the defendant, the Sessions Court would have the jurisdiction to try the action, notwithstanding the amount under the counterclaim, if parties had come to an agreement to confer jurisdiction to the Sessions Court pursuant to s. 65(3) and (4) of the Subordinate Courts Act 1948. Subsections (3) and (4) of s. 65 read:

(3) When the parties to an action or suit which, if the amount in dispute or value of the subject matter thereof did not exceed the limit of the jurisdiction, would be cognizable by a Sessions Court, have entered into an agreement in writing that the Sessions Court shall have jurisdiction to try the action or suit, the Sessions Court shall have jurisdiction to try the same, although the amount of the subject matter thereof may exceed the value limit of jurisdiction.

(4) Every such agreement shall be filed in the Sessions Court and, when it is so filed, the parties to it shall be subject to the jurisdiction of the Sessions Court.

[7] The learned counsel for the defendant, in her written submission, argues that the plaintiff should have inquired from the defendant first whether the defendant is agreeable to have the counterclaim adjudicated before the Sessions Court, before proceeding to file the present originating summons. In other words, the defendant's contention is that the present originating summons is premature.

[8] In my judgment, there is merit in the argument of the counsel for the defendant. A party should make an application to transfer a Sessions Court case to the High Court by reason of value limit only after the avenue to have the matter tried before the Sessions Court, as provided for under sub-ss. (3) and (4) of s. 65, has been diligently explored. In the present case, the initiative to have the jurisdiction agreement must be made by the plaintiff (who is the defendant at the Sessions Court). It is his counterclaim that exceeds the value limit of the Sessions Court.

It is he who is desirous of having the case transferred to the High Court. He should have in the first place proposed to the defendant (the plaintiff in the Sessions Court action). And he should make the application to the High Court for the transfer of the proceeding from the Sessions Court to the High Court only:

(a) if, the plaintiff having made his proposal to the defendant to have the matter to continue to be adjudicated before the Sessions Court pursuant to sub-s. (3) of s. 65, the defendant unreasonably refuses to agree to the proposal; or

(b) if, the plaintiff having made his proposal to the defendant to have the matter to continue to be adjudicated before the Sessions Court pursuant to sub-s. (3) of s. 65, the defendant refuses to respond to the proposal; or

(c) if, the plaintiff having made his proposal to the defendant to have the matter to continue to be adjudicated before the Sessions Court pursuant to sub-s. (3) of s. 65, the defendant unreasonably delayed in responding to the plaintiff's proposal.

[9] I am in agreement with the decision of my brother Judge, Abdul Wahab Patail J, on the effect of s. 65(3) in *Country Heights Marketing v. Firstland Management* [1998] 3 CLJ 17. There the learned judge said (at p. 20):

> Also the parties could make agreement under s. 65(3) of the Act to continue in the Sessions Court. There is no automatic right of transfer merely because a counterclaim exceeds the value limit jurisdiction of the Sessions Court.

[10] And at a later part of the learned judge's judgment his lordship said (at p. 21):

> This application made no reference as to whether the defendant had refused to agree under s. 65(3) of the Act to enable the Sessions Court to have jurisdiction beyond the general value limit. The objection to this application suggests that the defendant would be agreeable to such an agreement Be that as it may, this application is insufficient in failing to aver as to whether the other party was agreeable or otherwise to proceed under s. 65(3).